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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,727	06/27/2001	Scott Swix	60027.0018US01/BS01040	4789
39262	7590	02/08/2006	EXAMINER	
BELLSOUTH CORPORATION			TRAN, HAI V	
P.O. BOX 2903			ART UNIT	
MINNEAPOLIS, MN 55402-0903			PAPER NUMBER	

2611

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,727

Applicant(s)

SWIX ET AL.

Examiner

Hai Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 3,11 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-22 and 24-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>all</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 27 and 32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 27 with limitation "...further responsive to at least detecting that at least one 2nd diagnostic software agent is not operational on the at least one device at the remote site" is not disclosed in the specification.

Claim 32, with limitation "...and is later removed to allow more storage during an operational condition of the at least one device" is not disclosed in the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-2, 4-10, 12-22, 24-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middeke et al. (US 6445907) in view of Rangarajan (US 5987514).

Claim 1, A method for analyzing the operation of a media delivery device (Col. 2, lines 1-20), the method comprising the steps of:

determining whether a network connection is functional (by monitoring whether a service request is received from the service center 28; Col. 6, lines 1-15);
determining whether a 1st diagnostic agent is functional, in response to a determination that the network connection is functional (by detecting a service request at step 124, Col. 6, lines 17-18) ;

causing the 1st diagnostic agent to collect diagnostic data associated with the media delivery device (STB), in response to a determination that the 1st diagnostic agent is functional (gathering diagnostic information; Col. 6, lines 19-30) ;

analyzing the diagnostic data to determine an operational problem associated with the media delivery device (STB) (service center analyses the received diagnostic information; Col. 10, lines 60-63 and service technician remotely trouble-shoot and reconfigured the receiver; Col. 10, lines 35-55).

Middeke does not clearly disclose “uploading a second diagnostic agent to the media delivery device in response to a determination that the first diagnostic agent is not functional”

Rangarajan discloses uploading a second diagnostic agent to the receiver in response to a determination that the first diagnostic agent is not functional (Note: “not functional” reads on the diagnostic agent is not able to provide a precise error result. Col. 5, lines 64-Col. 6, lines 15). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Middeke diagnostic system to further uploading 2nd diagnostic agent, as taught by Rangarajan so to troubleshoot or narrow down the cause of a failure (Col. 2, lines 40-42).

Claim 2 Middeke in view of Rangarajan further discloses the step of uploading the first diagnostic agent to the media delivery device (STB) over an alternative network connection, in response to a determination that the network connection is not functional (reads on Middeke in which the remote technician at the remote service, i.e., workstation 30, by analyzing the diagnostic information received from the receiver, Col. 3, lines 40-Col. 15, the remote technician able to determine whether or not the network connection is functional. In view of the result, the remote technician able to reset the receiver to factory default including the first diagnostic agent that was pre-loaded by default based on the network communication status; Col. 10, lines 35-63; for example if the strength of the satellite transponder is weak, the only way to communicate between the receiver 24 and the remote service center

30 is through the communication line 32 of Fig. 1 so the technician able to troubleshoot the receiver 24).

Claim 4, Middeke further discloses the step of remedying the operational problem (Col. 10, lines 35-42).

Claim 5, "the step of uploading a second diagnostic agent to the media delivery device, in response to a determination that the network connection is not functional" is analyzed with respect to claim 1 in which Middeke's remote technician at the remote service, i.e., workstation 30, by analyzing the diagnostic information received from the receiver, Col. 3, lines 40-Col. 15, the remote technician able to determine whether or not the network connection is functional. In view of the result, the Middeke's remote technician in view of Rangarajan able to uploading a second diagnostic agent to the media delivery device through another communication link.

Claim 6 is analyzed with respect to claim 1.

Claim 7, Middeke further discloses wherein the performance problem is also associated with a 2nd device functionality connected to the media distribution device (Col. 3, lines 40-Col. 4, lines 15 that has plurality of status of plurality connected devices to the receiver, i.e., smartcard status.

Claim 8, Middeke further discloses the media distribution device is a STB (see Fig. 2; Col. 4, lines 15-40).

Claim 9, is analyzed with respect to claim 1.

Claim 10, Middeke further discloses wherein the intelligent diagnostic agent is executable in the system memory (Col. 6, lines 18-30).

Claim 12, "wherein the diagnostic service center can determine whether the diagnostic agent is functional" is further by Middeke' as analyzed with respect to claim 1 in which the remote service, i.e., workstation 30, able to receive the diagnostic information from the receiver.

Claim 13, is analyzed with respect to claim 1.

Claim 14, Middeke further discloses wherein the communication link is a broadband communication (see Fig. 1).

Claim 15, Middeke in view of Rangarajan does not clearly disclose the use of an ADSL as communication link.

Official Notice is taken that the use of ADSL is notoriously well known in the art for telephone companies to offer "video dial tone" over twisted pair. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention

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was made to modify Middeke in view of Rangarajan to use ADSL as communication so to provide to user an alternative way to receive video at high-speed over telephone twisted pair network.

Claim 16, Middeke further discloses wherein the communication link is a satellite connection (see Fig. 1).

Claims 17-18, are analyzed with respect to claim 1.

Claim 19 is analyzed with respect to claim 2.

Claim 20, Middeke further discloses a media delivery service provider operative to transmit a media content stream to a media distribution device (see Fig. 1).

Claims 20, 21, 25, 26 are analyzed with respect to claim 1.

Claims 22 is analyzed with respect to claim 2.

Claim 24 is analyzed with respect to claim 4.

Claims 28 and 29 are analyzed with respect to claim 2.

Claim 30, Middeke further discloses wherein the at least one 2nd communication path comprises a wireless link (Col. 3, lines 30-32).

Claim 31, Middeke further discloses wherein the wireless link comprises satellite communication (Col. 3, lines 30-32).

Claim 32, Middeke further discloses wherein code related to the at least one 1st diagnostic software agent is stored in the at least one device at the remote site for diagnostic testing and is later removed to allow more storage during an operational condition of the at least one device (reset to default setting; Col. 10, lines 35-41)

Claim 33, Middeke further discloses wherein the at least one first diagnostic software agent is interactive with a customer through a presentation device (Col. 4, lines 60-67+).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is (571) 272-7305. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher C. Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HT;ht
02/02/2006



HAITRAN
PRIMARY EXAMINER